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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,098	03/18/2004	Yoshikazu Hirose	26B-028	5293

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POSZ LAW GROUP, PLC
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EXAMINER	
PHILLIPS, FORREST M	
ART UNIT	**PAPER NUMBER**
2837	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/803,098	HIROSE ET AL.	
	Examiner	Art Unit	
	Forrest M. Phillips	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 4-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see amendment, filed 11/30/06, with respect to the rejection(s) of claim(s) 1 under 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Flanders (US4593784).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent '257 in view of Flanders.

With respect to claim 1 ' 257 discloses an intake air apparatus comprising:

An air intake passageway portion which includes an air intake duct (10 in figure 1) continuing to an inlet for introducing outside air, and which serves as an air intake path reaching an engine body; and a permeable port (14 in figure1) including an aperture provided in a part of the intake air passageway potion (15 in figure 2) and for allowing the side of the intake air passageway portion to communicate with the outside thereof, and a porous member (16 in figure 2) covering the aperture; wherein the permeable port is provided in a position in the air intake duct (refer to figure 1).

'257 does not disclose wherein the position includes at least a central position of the whole length of the air intake duct and a central position of the whole length of the intake air passageway portion.

Flanders discloses the importance of determining the specific location to place an acoustic pressure-relieving aperture (Column 5 lines 40-60).

At the time of the invention it would have been obvious to one of ordinary skill in the art to apply the teachings of Flanders in the importance of the placing of ~~acoustic~~ acoustic pressure relieving apertures with the air intake device of '257, to provide the maximum alleviation of the pressure by placing the aperture where it would vent the most pressure.

Furthermore it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

With respect to claim 9 '257 as modified discloses the invention as claimed except wherein the permeable member is provided so as to continuously open form the central position of the air intake duct to the central position of the whole length of the air intake passageway portion. It would have been an obvious matter of design choice to size the cover so that the single continuous member opened from the central position of the air intake duct to the central position of the whole length of the air intake passageway portion, since such a modification would have involved a mere change in the size of a component. A change in size of a component is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237(CCPA1955).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over '257 in view of Flanders as applied to claim1 above, and further in view of Kino.

With respect to claim 4 '257 in view of Flanders discloses the invention as claimed except wherein the permeable port is formed by hot welding of a PET porous member to the intake air passageway portion external surface side of the aperture formed in the wall surface of the air intake duct and the dirty side of the air cleaner.

Kino discloses however that the permeable port (13 in figure 2) is constructed of a porous member fixed to the intake air passageway portion external surface side of the aperture formed in the wall surfaces of the air intake duct and the dirty side of the air cleaner.

The method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

With respect to claim 5 Kino further discloses wherein the permeable port (13 in figure 1) is formed in a way that each outer edge (23 in figure 1) of the aperture of the intake air passageway portion is formed to project outward from the intake air passageway portion, and the porous member (14 in figure 1) is attached to the projecting outer edge.

Again the welding limitation has not been given patentable weight, as was the case in claim 4.

With respect to claim 6 Kino further discloses wherein the permeable member is formed in a way that an end portion of each projecting outer edge is made substantially parallel with the external surface of the intake air

passageway portion, and the porous member is welded to the end portion (refer to figure 2d close up).

With respect to claim 7 Kino further discloses wherein the permeable member (14 in figure 1) is formed in a way that the porous member formed into a predetermined shape (rectangular) in advance is used.

The method of forming a device is not germane to the patentability of the device itself. Therefore the limitation of insert molding has not been given patentable weight.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over '257 in view of Flanders as applied to claim 1 above, and further in view of Japanese patent publication 2002021660 (hereinafter '660).

With respect to claim 8 '257 as modified discloses the invention as claimed except wherein the permeable member is provided so as to continuously open over both of the air intake duct wall surface and an air cleaner dirty sidewall surface.

'660 discloses an opening covered with a permeable member on the dirty sidewall surface of an air cleaner (4 in figure 1) for reducing noise in an air intake passageway.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of '660 to have a opening on the sidewall of an air cleaner ditty side with the apparatus of '257 as modified and extend the permeable member so as to cover both given this would require only a change in size. It has been held that a change in size is generally held to be within the level of ordinary skill in the art. In re Rose, 105 USPQ 237(CCPA1955).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Listed on form 892

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forrest M. Phillips whose telephone number is 5712729020. The examiner can normally be reached on Monday through Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 5712721988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FP

LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER